

DIAMOND ALKALI SUPERFUND SITE TOLLING AGREEMENT

The United States, on behalf of the United States Environmental Protection Agency, contends that it has a cause of action under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9607 and 9613, against the undersigned Potentially Responsible Parties (hereinafter, "Cooperating Parties") for the recovery of response costs incurred and to be incurred by the United States in connection with the Diamond Alkali Superfund Site, including the property located at 80-120 Lister Avenue, Newark, New Jersey, the Lower Passaic River Study Area, and the areal extent of contamination (the "Site"). EPA has conducted response actions and incurred and continues to incur response costs related to the release or threatened release of hazardous substances at the Site. The claims described in this paragraph are hereinafter referred to as the "Tolled Claims."

The United States and Cooperating Parties ("Parties") enter into this Tolling Agreement to facilitate settlement negotiations between the Parties within the time period provided by this Tolling Agreement, without thereby altering the claims or defenses available to any Party hereto, except as specifically provided herein.

The Parties, in consideration of the covenants set out herein, agree as follows:

1. Notwithstanding any other provision of this Tolling Agreement, the period commencing on February 15, 2019 and ending on February 15, 2021, inclusive (the "Tolling Period"), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States on the Tolled Claims.
2. Any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims.
3. A Cooperating Party shall not assert, plead, or raise against the United States in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.
4. This Tolling Agreement does not constitute any admission or acknowledgment of any fact, conclusion of law, or liability by any Party to this Tolling Agreement. Nor does this Tolling Agreement constitute any admission or acknowledgment on the part of the United States that any statute of limitations, or similar defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims. The United States reserves the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing a civil action is applicable. Each Cooperating Party reserves all rights and defenses it may have, except as set forth in this Tolling Agreement, to contest or defend any claim the United States may bring against the Cooperating Party.
5. This Tolling Agreement may not be modified except in a writing signed by the Parties. The Parties acknowledge that this Tolling Agreement may be extended for such period of time as the Parties agree to in writing.

6. It is understood that the United States may terminate settlement negotiations and commence suit at any time, upon provision of written notice by mail to Cooperating Parties. Where the United States elects to terminate negotiations under this Paragraph, the Tolling Period shall continue for the duration set forth in Paragraph 1. If the United States commences suit against some Cooperating Parties, the Tolling Period shall continue for the duration set forth in Paragraph 1 with respect to other Cooperating Parties. Nothing herein shall preclude the commencement of any action by the United States to protect the public health, welfare, or the environment without provision of advance notice.

7. This Tolling Agreement does not limit in any way the nature or scope of any claims that could be brought by the United States in a complaint against Cooperating Parties or the date on which the United States may file such a complaint, except as expressly stated herein.

8. This Tolling Agreement is not intended to affect any claims by or against third parties.

9. This Tolling Agreement is effective between the United States and each Cooperating Party upon execution by the Cooperating Party, and without the requirement of filing with the Court, and may be signed in counterparts.

10. This Tolling Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by any Party to this Tolling Agreement that is not set forth in this Tolling Agreement shall be valid or binding, nor shall it be used in construing the terms of this Tolling Agreement as set forth herein.

11. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Tolling Agreement and to legally bind such party to all terms and conditions of this document. This Tolling Agreement shall be binding upon the United States, acting on behalf of the United States Environmental Protection Agency, and upon Cooperating Parties and their successors.

The United States, on behalf of the United States Environmental Protection Agency, consents to the terms and conditions of this Diamond Alkali Superfund Site Tolling Agreement by its duly authorized representatives on this ____ day of _____, 2019.

ROBERT E. MAHER
Assistant Section Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice

By:

LAURA J. ROWLEY
Senior Attorney
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

The undersigned Cooperating Party consents to the terms and conditions of this Diamond Alkali Superfund Site Tolling Agreement by its duly authorized representative on this 5th day of January 2019.

For: Curtiss-Wright Corporation

By: Mark Benson
Signature

Mark Benson
Printed Name

Associate General Counsel
Title

400 Interpace Parkway
Building D
Parsippany, NJ 07054
Address

973-541-3756
Phone Number

mberenson@curtisswright.com
Email address

The undersigned Cooperating Party consents to the terms and conditions of this Diamond Alkali Superfund Site Tolling Agreement by its duly authorized representative on this 18th day of January, 2019.

For: Spectraserv, Inc.

By:


Signature

Diana L. Buongiorno, Esq.
Printed Name

Counsel for Spectraserv, Inc.
Title

Chiesa Shahinian & Giantomasi PC

One Boland Drive

West Orange, New Jersey 07052
Address

973-530-2075
Phone Number

Dbuongiorno@csglaw.com
Email address

The undersigned Cooperating Party consents to the terms and conditions of this Diamond Alkali Superfund Site Tolling Agreement by its duly authorized representative on this 18th day of January, 2019.

For: Palin Enterprises, LLP

By: 
Signature

Diana L. Buongiorno, Esq.
Printed Name

Counsel for Palin Enterprises, LLP
Title

Chiesa Shahinian & Giantomasi PC

One Boland Drive

West Orange, New Jersey 07052
Address

973-530-2075
Phone Number

Dbuongiorno@csglaw.com
Email address